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February 17, 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: MM Docket 94-155, RM-8468

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith on behalf of Gulf Communications Partnership are an original and four copies of its Comments and Counterproposal in the above-referenced proceeding.

Should there be any questions regarding this matter, kindly communicate directly with the undersigned.

Very truly yours,

Kathleen Victory

Kathleen Victory
Counsel for
Gulf Communications Partnership

Enclosures

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEB 17 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Big Pine Key, Key Colony Beach,)
Naples and Tice, Florida))

MM Docket No. 94-155
RM-8486

DOCKET FILE COPY ORIGINAL

To: Chief, Allocations Branch

COMMENTS AND COUNTERPROPOSAL

Gulf Communications Partnership ("Gulf"), permittee of Station WAAD(FM), Tice, Florida, by its counsel and pursuant to the Commission's December 27, 1994 Notice of Proposed Rule Making and Order to Show Cause ("NPRM") in the above-captioned proceeding, submits the following comments and counterproposal in support of the proposed modification of the FM Table of Allotments.

On March 31, 1994, Gulf proposed the amendments to the FM Table of Allotments which are the subject of the instant Rule Making proceeding. Gulf incorporates its Petition for Rule Making herein by reference. While Gulf continues to support the modifications to the FM Table of Allotments set forth in the NPRM, Gulf hereby proposes a revision to its proposal. Pursuant to Section 1.420(i) of the Commission's Rules, Gulf proposes to change the WAAD(FM) community of license from Tice to Estero, Florida, as that community's first local aural service. As established in the technical statement of Jefferson G. Brock of Graham Brock, Inc., attached hereto, the allotment of Channel 229C2 to Estero can be made in compliance

with the Commission's separation requirements, consistent with the other channel modifications specified in the NPRM, and at the referenced site in the NPRM.

Moreover, Section 307(b) of the Communications Act of 1934 (the "Act") requires the "fair, efficient, and equitable distribution of radio service" among the States and communities. The counterproposal's community change accomplishes just such a distribution. It provides a first local service to the growing community of Estero, while continuing to offer a reception service to Tice.¹ Estero is a Census Designated Place² and is located in Lee County, Florida. Based on the 1990 U.S. Census, the community of Estero has a total population of 3,177 persons. According to the Lee County Division of Planning, Estero is a growing community with a current population of 7,705 persons. This is in direct contrast to the trend in Tice. The 1990 U.S. Census population for Tice was 3,971, a drop of 2,674 persons from the 1980 U.S. Census figure of 6,645 and down 3,283 from the 1970 figure of 7,254. Thus, a first local service to Estero will provide a service to a growing community as opposed to the shrinking community of Tice.

¹ While WAAD is the only "service" allotted to Tice, this proposed community change will not deprive Tice of any actual service, as WAAD is not an operating facility. As indicated above, in the event the Commission approves this counterproposal, Tice would receive service from the Estero facility.

² "Census Designated Places (CDP's) are delineated for the decennial census as the statistical counterpart of incorporated places. CDP's comprise densely settled concentrations of population that are identifiable by name, but are not legally incorporated places." 1990 U.S. Census of Population and Housing -Florida, 1990 CPH-1-11, p. A-7. The Commission has found that "if a community is incorporated or listed in the U.S. Census, that is sufficient ground upon which to base a favorable determination of community status." Garden City, Indiana, 6 FCC Rcd 3747. 3748 (1991).

Not only is Estero a CDP, but it has other indicia of its status as a community for purposes of Section 307 of the Act. In addition to its rapidly growing population, Estero has its own civic association which meets monthly and collects its own taxes in order to provide local fire service. It is also represented at the County level by its own Commissioner. In addition, Estero has its own churches, numerous businesses (e.g., Estero Bay Properties, Inc. and Estero Tropical Fruits & Gifts) and residential areas, an elementary school and a high school. Estero clearly qualifies as a community deserving of its own local radio service.³

While under this counterproposal, Tice will not have a local transmission service, it will experience no loss of reception service and the deletion of an unbuilt construction permit from a community does not constitute a loss of existing service. Thus, the Commission's policy against allowing the deletion of a community's only local transmission service, as expressed in Report and Order In the Matter of Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations To Specify a New Community of License, 66 RR 2d 877, 883 (1989), is not implicated. As the Commission stated in Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations To Specify a New Community of License, 68 R.R. 2d 644, 650 (1990), an "existing service" is the "... signal of an operating station that can be accessed today simply by turning on a TV or radio set." In essence, therefore, Tice will not lose an "existing service." On the other hand, if the Commission adopts Gulf's counterproposal, the larger community of Estero will gain a first local

³ The foregoing information was obtained from sources within the community.

service which will provide new service to Tice as well.

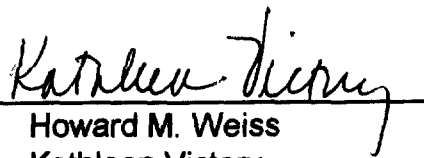
Moreover, any harm to Tice is further mitigated by its inclusion within the U.S. Census designated Fort Myers Urbanized Area. Members of the Tice community have numerous aural services from other communities within this Urbanized Area at their disposal, and their need for a local transmission service can be presumed satisfied by the stations the integrally related communities of the Urbanized Area. See Faye and Richard Tuck, Inc., 3 F.C.C. Rcd 5374, 5379 (1988). Estero, on the other hand, is outside of the Fort Myers Urbanized Area and therefore has a greater need for a first local service.

In the event that the Commission elects not to grant Gulf's counterproposal, Gulf confirms its interest in remaining a permittee in Tice and its interest in, and intent to move forward with, the upgrade of its facilities pursuant to the modifications in the FM Table of Allotments proposed in the NPRM. Gulf confirms that in the events the proposed substitution of Channel 229C2 for Channel 229A at Estero or Tice, Florida, is authorized, the WAAD(FM) construction permit is modified to permit construction thereon, the additional proposed substitutions at Naples, Big Pine Key and Key Colony Beach are authorized, and the licenses of Stations WNOG(FM), Naples, and WWUS(FM), Big Pine Key, and the construction permit of WKKB(FM), Key Colony Beach, Florida, are modified to specify operation on such channels, Gulf will file the necessary modification application with the FCC and, if granted, will promptly construct the facilities of WAAD(FM) accordingly.

In addition, Gulf pledges that, in the event the Commission adopts Gulf's counterproposal or the proposal set forth in the NPRM, it will reimburse the licensees of WNOG and WWUS and, to the extent required⁴, the permittee of WKKB, for the reasonable costs associated with the modification of their existing facilities to operate on the foregoing channels.

Respectfully submitted,

GULF COMMUNICATIONS PARTNERSHIP

By 
Howard M. Weiss
Kathleen Victory
James A. Casey

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street
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February 17, 1995

⁴ As noted in Gulf's Petition for Rule Making, the current Key Colony Beach allocation does not conflict with the proposal filed by Gulf. Only if the modification of the Key Colony Beach allotment made in MM Docket 91-136 (the "Key Largo Rule Making") becomes final, would the modified Key Colony Beach allocation interfere with the instant proposal. Thus, Gulf believes that the repayment of any expenses of the Key Colony Beach permittee might incur as a result of a channel change are the responsibility of the Key Largo petitioner. At most, Gulf should be required to pay one half of any expenses incurred by the Key Colony Beach permittee since the permittee will be required to change channels (albeit to a channel other than that specified in the Key Largo Rule Making), if at all, only as a result of the Key Largo Rule Making. Moreover, if as of the time of the issuance of a Report and Order in this proceeding, the Key Colony Beach facility has not been constructed on either its originally authorized channel or the channel authorized in the Key Largo Rule Making, then there should be no costs to reimburse. In any event, Gulf will abide by the Commission's ruling on this issue.

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

COMMENTS AND COUNTERPROPOSAL
MM DOCKET #94-155
GULF COMMUNICATIONS PARTNERSHIP
HAAD RADIO
ESTERO, FLORIDA
February 1995

TECHNICAL EXHIBIT

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COMMENTS AND COUNTERPROPOSAL
MM DOCKET #94-155
GULF COMMUNICATIONS PARTNERSHIP
WAAD RADIO
ESTERO, FLORIDA
February 1995

TECHNICAL STATEMENT

This Technical Statement and attached exhibits were prepared on behalf of Gulf Communications Partnership ("Gulf"), permittee of radio station WAAD, Channel 229A, Tice, Florida. Gulf is also the petitioner in MM Docket #94-155 seeking to upgrade WAAD to a Class C2 facility. In its original Petition for Rulemaking and Supplemental Comments, Gulf indicated its desire to upgrade WAAD to a C2 facility. This upgrade necessitated additional changes to the Table of Allotments to accommodate the upgrade. Those changes were outlined in the petition and are included herein by reference.

Gulf herein seeks to propose an alternative community of license for WAAD. Currently Channel 229A is allocated to Tice, Florida, a Census Designated Place (CDP) in the Fort Myers Urbanized Area in Lee County, Florida. The population of Tice, based on 1990 Census figures, is 3,971 persons. This is a reduction from the 6,645 person count of the 1980 Census, which was reduced from the 7,254 persons in the 1970 Census. WAAD is presently an unbuilt Class A construction permit in Tice, thus, the removal of the channel from Tice without replacement will not deprive the community of service, since it is presently

not receiving service from the facility. Further, Tice's placement in the Fort Myers Urbanized Area enables it to receive service from stations which also licensed to other communities in the urbanized area.¹

Gulf herein requests that WAAD be upgraded to Channel 229C2 and the upgraded channel be allocated to Estero, Florida, as that community's first local service. Estero is a Census Designated Place located in southern Lee County. It is outside the Fort Myers Urbanized Area. Estero has a population of 3,177 persons, based on the 1990 census. Channel 229C2 can be allotted to Estero, Florida, in compliance with the Commission's minimum distance separation requirements at the reference site at North Latitude 26° 36' 21" and West Longitude 81° 57' 10". This represents a site restriction of 23.3 kilometers northwest of the community in order to avoid shortspacing WLVE, Channel 230C, Miami Beach, Florida. From the reference site Estero will be provided with the requisite 3.16 mV/m contour from WAAD. Exhibit #1 is a usable area study for Channel 229C2 at Estero, Florida. Exhibit #1A is a \$73.207 spacing study for Channel 229C2. Both exhibits assume Channel 284A has been substituted for Channel 228A at Naples, Florida. Channel 229C2 at Estero, Florida, is mutually exclusive with the present allocation of Channel 229A at Tice, Florida.

Therefore, Gulf proposes the following changes to the Commission's Table of FM Allotments:

1) AM stations WIAK, WCRM, WMYR, WWCN and FM stations WXKB, WOLZ, WINK-FM, WWGR and WROC-FM.

ESTERO, FLORIDA

| <u>Present</u> | <u>Proposed</u> |
|----------------|-----------------|
| None | 229C2 |

TICE, FLORIDA

| <u>Present</u> | <u>Proposed</u> |
|----------------|-----------------|
| 229A | None |

NAPLES, FLORIDA

| <u>Present</u> | <u>Proposed</u> |
|-----------------------|----------------------|
| 228A, 233C, 276C3, | 233C, 276C3, 284A |

BIG PINE KEY, FLORIDA

| <u>Present</u> | <u>Proposed</u> |
|----------------|-----------------|
| 284C | 283C |

KEY COLONY BEACH, FLORIDA

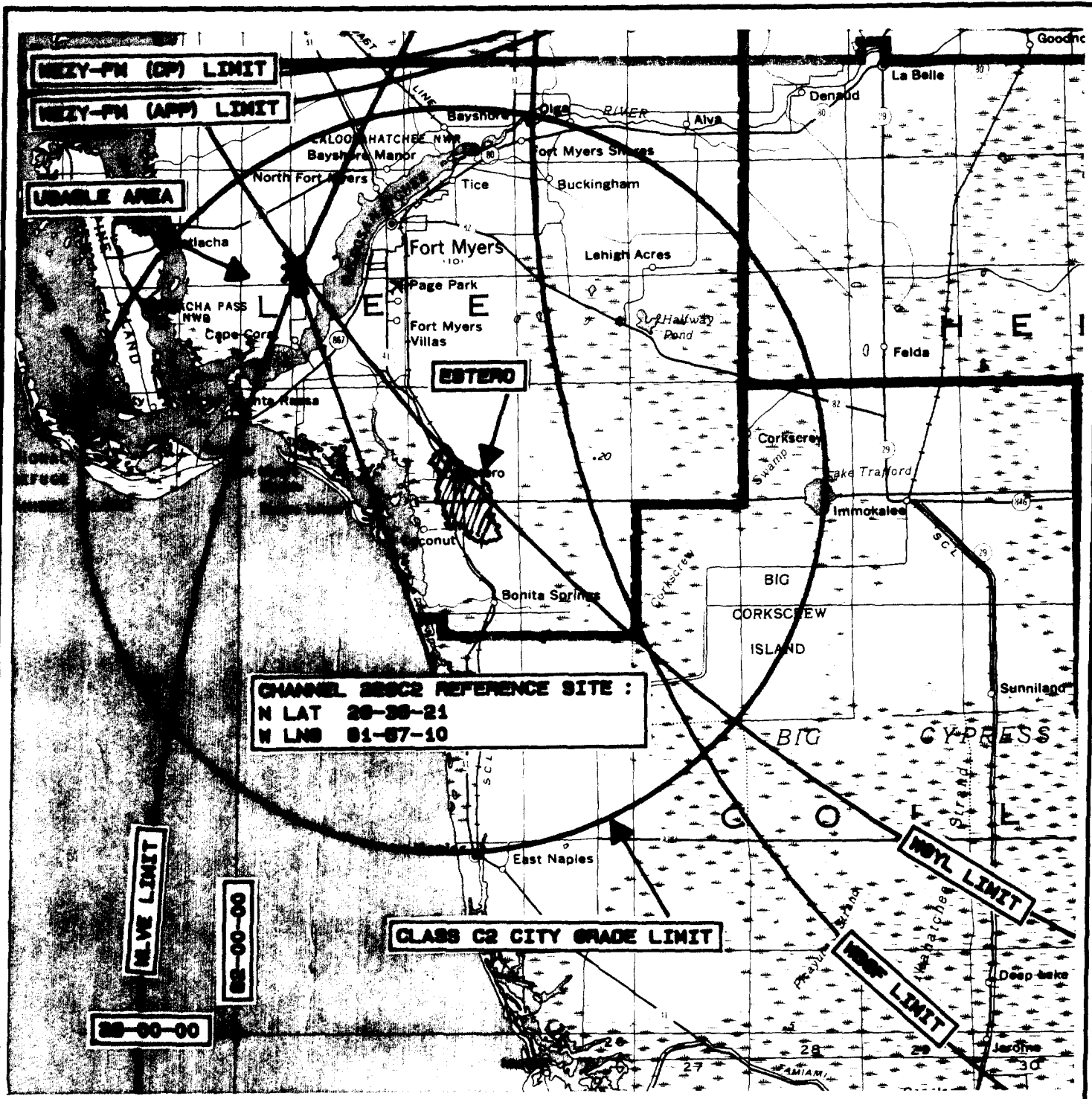
| <u>Present</u> | <u>Proposed</u> |
|----------------|-----------------|
| 288C2 | 257C2 |

PUBLIC INTEREST ASPECTS

This proposed allocation of Channel 229C2 to Estero, Florida, will provide this community with its first local service without removing service to Tice (since no service presently exists in Tice). Tice's location within the Fort Myers urbanized area affords the community service from numerous aural facilities licensed to other communities within the urbanized area.

Estero has its own civic association, churches, numerous businesses and residential areas. Estero also provides fire service to the community and has its own private water plant, separate from Lee County. Estero also has its own elementary and high school. Gulf, therefore, respectfully requests the allocation of Channel 229C2 to Estero, Florida, as the community's first local service.

The foregoing Technical Statement and exhibits were prepared on behalf of Gulf Communications Partnership by Graham Brock, Inc., its Technical Consultant. All information contained herein is true and accurate to the best of our belief and knowledge. All data relating to AM and FM facilities was extracted from the NTIA database. We assume no liability for errors or omissions in that database which may be adverse to the requests contained herein.



USABLE AREA CHANNEL 229C2

MAP IS A PORTION OF THE 1: 500, 000 SCALE
U.S.G.S. BASE MAP OF FLORIDA.

MAP ASSUMES WNOB-FM ON CHANNEL 284A AT
NAPLES, FLORIDA.

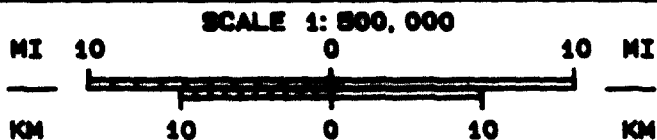


EXHIBIT #1

COMMENTS & COUNTERPROPOSAL
GULF COMM. PARTNERSHIP
WAAD RADIO STATION
CH 229C2 - 93.7 MHZ
ESTERO, FLORIDA

February 1995

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

ALLOCATION STUDY FOR CHANNEL 229C2 ESTERO, FLORIDA
USING PROPOSED ALLOCATION SITE AS REFERENCE

| | | |
|------------------------------------|------------------------|-----------------|
| REFERENCE | CLASS C2 | DISPLAY DATES |
| 26 36 21 N | | DATA 12-30-94 |
| 81 57 10 W | Current rules spacings | SEARCH 02-16-95 |
| ----- CHANNEL 229 - 93.7 MHz ----- | | |

| CALL TYPE | CH# LAT | CITY LNG | STATE FWR | BEAR' HT | D-KM D-Mi | R-KM R-Mi | MARGIN (KM) |
|--|---------------------------------|-------------|--------------|-------------|---------------|--------------|----------------|
| AD229 | 229C2 | Estero | FL | 0.0 | 0.00 | 190.0 | -190.00 |
| AD | 26 36 21 | 81 57 10 | 0.000 kW | 0M | 0.0 | 118.1 | |
| | Gulf Communications Partnership | | | | RM-8468 | | 940331 |
| >Counterproposal - Site Restricted 23.3 km northwest | | | | | | | |
| WAAD.C | 229A | Tice | FL | 41.9 | 16.32 | 166.0 | -149.68 |
| CP CN | 26 42 56 | 81 50 36 | 3.000 kW | 100M | 10.1 | 103.2 | |
| | Gulf Communications Partnership | | | | BPH-880518MR | | 940817 |
| * WNOGFM | 228A | Naples | FL | 156.8 | 58.26 | 106.0 | -47.74 |
| LI CN | 26 07 21 | 81 43 22 | 3.000 kW | 91M | 36.2 | 65.9 | |
| | Palmer Communications Incorp. | | | | BLH-5343 | | |
| WLVE | 230C | Miami Beach | FL | 112.1 | 188.00 | 188.0 | 0.00 |
| LI ZCN | 25 57 59 | 80 12 33 | 100.000 kW | 307M | 116.8 | 116.8 | |
| | Paxson Miami License Limited | | | | BMLH-940613KH | | |
| WGYL | 229C2 | Vero Beach | FL | 54.5 | 190.00 | 190.0 | 0.00 |
| LI CN | 27 36 04 | 80 23 33 | 50.000 kW | 146M | 118.1 | 118.1 | |
| | Sandbath Communications Ltd. | | | | BLH-911021KD | | |
| WEZYFM | 231C | Lakeland | FL | 352.5 | 119.27 | 105.0 | 14.27 |
| AP CN | 27 40 23 | 82 06 35 | 100.000 kW | 455M | 74.1 | 65.3 | |
| | Chapman S. Root 1982 Living | | | | BMPH-940906IE | | |
| WEZYFM | 231C | Lakeland | FL | 355.8 | 121.84 | 105.0 | 16.84 |
| CPM CN | 27 42 09 | 82 02 32 | 100.000 kW | 323M | 75.7 | 65.3 | |
| | Chapman S. Root 1982 Living | | | | BMPH-930914IF | | 940915 |
| WBGF | 228A | Belle Glade | FL | 84.5 | 127.01 | 106.0 | 21.01 |
| LI CN | 26 42 56 | 80 40 58 | 3.000 kW | 78M | 78.9 | 65.9 | |
| | Seminole Broadcasting Co. | | | | BLH-800418AC | | |
| WFLZ | 227C | Tampa | FL | 347.4 | 140.39 | 105.0 | 35.39 |
| LI CY | 27 50 32 | 82 15 46 | 100.000 kW | 414M | 87.3 | 65.3 | |
| | Jacor Broadcasting of Tampa | | | | BLH-880627KA | | |

CHANNEL 229C2 ALLOCATION STUDY

* NOTE : CHANNEL 284A HAS BEEN PROPOSED AS A SUBSTITUTE CHANNEL FOR 288A AT NAPLES, FLORIDA, BY GULF COMM. PARTNERSHIP. THEREFORE, WNOG-FM ON CHANNEL 288A IS NO CONSIDERED AS A RESTRICTION TO THIS UPGRADE.

EXHIBIT #1A
COMMENTS & COUNTERPROPOSAL
GULF COMM. PARTNERSHIP
WAAD RADIO STATION
CH 229C2 - 93.7 MHZ
ESTERO, FLORIDA
February 1995

GRAHAM BROCK, INC.
BROADCAST TECHNICAL CONSULTANTS

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

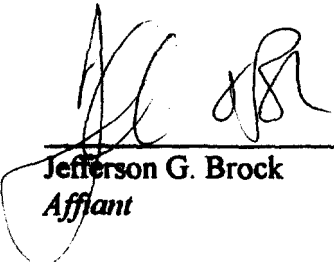
*State of Georgia)
St. Simons Island)ss:
County of Glynn)*

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Gulf Communications Partnership permittee of Radio Station WAAD, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 16th day of February, 1995



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 16th day of February, 1995*



Notary Public, State of Georgia
My Commission Expires: September 8, 1995

CERTIFICATE OF SERVICE

I, Becky Ingham, a secretary in the law firm of Fletcher, Heald and Hildreth, do hereby certify that true copies of the foregoing "Comments and Counterproposal" were sent this 17th day of February, 1995, by postage paid first-class United States mail to the following:

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Acting Chief, Allocations Branch
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